IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8245 of 1988
with
SPECIAL CIVIL APPLICATION NO.8252 of 1988
with
SPECIAL CIVIL APPLICATION No 2036 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PORBANDRA COMMERICAL COOP BANK LTD
Versus
ANANTRAI M MEHTA

Appearance:
1. Special Civil Application No. 8245 of 1988
MR PM THAKKAR for Petitioner No. 1
MR YOGESH S LAKHANI for Respondent No. 1
2. Special Civil Application No. 2036 of 1989
MR YOGESH S LAKHANI for Petitioner No. 1
MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 19/07/2002

ORAL JUDGEMENT

All the above-numbered petitions arise out of the award and order dated November 30, 1988, rendered by the Industrial Tribunal, Rajkot, in Appeal ICR No.1/85. As common question of facts and law arises for my consideration in the three petitions, I propose to dispose them of by this common judgment.

2. The respondent in Special Civil Application No. 8245/88 and Special Civil Application No. 8252/88 was an employee of Porbandar Commercial Co.operative Bank Limited, which is the petitioner in the above-referred to two petitions. The said respondent was dismissed from service, as according to the Bank, the respondent had committed misconduct. He had, therefore, approached the Labour Court at Rajkot by filing an application under section 79 of the Bombay Industrial Relations Act. The Labour Court was of the view that the charges levelled against the respondent were not established and the order dated February 2, 1974 terminating the services of the respondent was illegal. The Labour Court had, therefore, directed the Bank i.e. petitioner in Special Civil Application No. 8245/88 and Special Civil Application No. 8252/88 to reinstate the respondent in service with full backwages. Feeling aggrieved by the said award, the Bank had preferred Special Civil Application No. 94/1983, which was disposed of by the Division Bench, vide judgment dated January 27, 1983. The Division Bench had upheld the direction to reinstate the respondent to his original post with continuity of service, but had set aside the direction to pay full backwages to the respondent and remanded the matter to the Labour Court to ascertain whether the respondent was gainfully employed during the interregnum period.

3. After the remand, the parties were permitted to lead evidence and the Labour Court, by award dated February 8, 1985, held that the respondent was entitled to 40% of backwages from February 2, 1974 to February 3, 1983, with benefits of allowances etc.

4. Feeling aggrieved by the said award, the Bank had filed Appeal ICR 1/85 before the Industrial Tribunal, Rajkot. The Tribunal by award dated November 30, 1988, held that the respondent was entitled to 71% of backwages for the interregnum period. The said award has given rise to the above-numbered three petitions. The claim of the Bank in Special Civil Application No. 8245/88 is that the respondent is not entitled to 71% of backwages

as directed by the Industrial Tribunal; whereas in Special Civil Application no.8252/88, the claim of the Bank is that the respondent is not entitled to any backwages, and the claim of the workman in Special Civil Application No. 2036/89 is that he is entitled to 100% of backwages for the interregnum period.

5. Heard the learned counsel for the parties. Special Civil Application No. 8245/88 and Special Civil Application No. 8252/88 were placed for admission hearing before the Division Bench comprising S.B.Majmudar, J. (as he then was) and J.P.Desai,J.) on January 12, 1989 and the Division Bench had passed following order :-

"Having heard the learned Advocates of both the sides, interim relief is granted as under :

There will be stay of the order passed by the Industrial Tribunal, Rajkot in appeal which is impugned in these petitions, subject to the condition that the petitioner, without prejudice to its rights and contentions, deposits on account, 50% of the backwages as awarded by the courts below for payment to the respondent, meaning thereby, that for the purpose of the present interim relief order, the direction in the appellate order of 71% will be read down as 50% without prejudice to the rights and contentions of either side. The petitioner shall deposit 50% of the awarded amount as computed by the petitioner within four weeks from today, before the Labour Court at Rajkot in B.I.R. Application No. 82 of 1974. Liberty is reserved to the respondent to withdraw the same on furnishing security to the satisfaction of the Labour Court for the amount withdrawn. It would be open to the respondent to offer as security whatever retirement benefits he is likely to have and which will be lying deposited with the petitioner-Bank."

6. The evidence on record shows that the employee was out of job from February 2, 1974 to February 3, 1983, but was earning by managing Mehta Hotel, which was in the name of his minor son, in the City of Porbandar. It is true that during the interregnum period, the workman was gainfully employed. However, no cogent evidence could be led by the establishment to show that what was earned by the employee was equal to or more than the salary paid to him, nor could it be established by the workman that the

income which he was deriving by managing the affairs of the Hotel was not sufficient to maintain himself. In view of paucity of the evidence on record, I am of the opinion that the employee would be entitled to get 50% of the backwages for the interregnum period as indicated in interim order quoted above. The claim made by the workman that he is entitled to 100% of the backwages, is not justified at all and liable to be rejected.

For the foregoing reasons, Special Civil Application No. 8245/1988 is partly allowed, and it is held that during the interregnum period, the respondent would be entitled to 50% of the backwages. In the said petition, rule is made absolute with no order as to costs.

Special Civil Application No. 8252/1988, in which it is claimed that the respondent is not entitled to any backwages, has no substance and is, therefore, liable to be dismissed. The same is, therefore, dismissed and rule is discharged with no order as to costs.

Special Civil Application No. 2036/1989, in which the employee has claimed 100% of the backwages, has no substance and is liable to be dismissed. Therefore, it is dismissed and rule is discharged, with no order as to costs.

(J.M.Panchal,J.)

(patel)